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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 004456

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#)

SUBJECT: ROGUE LAWYER STRIKES AGAIN; PARLIAMENT MAY TAKE  
ACTION TO REVISE ARTICLE 301

REF: A. 05 ISTANBUL 1780

[1](#)B. 05 ISTANBUL 2058

[1](#)C. ISTANBUL 172

[1](#)D. ANKARA 3714

[1](#)E. ANKARA 3985

Classified By: Political Counselor Janice G. Weiner for Reasons 1.4  
(b, d)

This is a joint Consulate Istanbul/Embassy Ankara report.

[1](#)1. (SBU) Summary: Novelist Elif Safak has been charged with "insulting Turkish identity" under Article 301 of the Turkish Penal Code. Safak was charged as a result of a criminal complaint filed by ultranationalist lawyer Kemal Kerincsiz. Kerincsiz has exploited Article 301, which targets those who insult Turkish identity or the Turkish Republic, to harass countless writers and academics. The GOT has asked for patience to permit appropriate jurisprudence concerning Article 301 to develop. However, Kerincsiz's complaints may well force the GOT to confront amending the article head-on before October, when the EU, already highly critical of the law, publishes its progress report on Turkey. End Summary.

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The Latest Case: Elif Safak  
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[1](#)2. (SBU) Elif Safak, a writer and assistant professor at the University of Arizona (and 7 months pregnant), has been charged with two counts of insulting the Turkish identity under Turkish Penal Code (TPC) Article 301. In her novel published in Turkish in March as "Baba ve Pic" (The Father and the Bastard), characters discuss the Armenian genocide. Kemal Kerincsiz, a lawyer from the ultranationalist Grand Lawyers, Association, filed a complaint in June with Istanbul's Beyoglu District Court, claiming that the book violated Article 301 and insulted Turkish identity. Although the initial investigation concluded that there was no basis for charges, Kerincsiz appealed and a higher court ordered the prosecutor to indict Safak, her translator, and the publisher. No court date has been set, but Safak told us that she believes the court case will be heard after the August judicial recess. Safak is due to deliver her baby in late September and her attorney believes this will help her case. Safak faces six months to three years in jail if convicted.

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Rogue Lawyer Kerincsz Uses Article 301 Again  
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¶3. (U) Article 301 states that "a person who explicitly insults being a Turk, the Republic, or Turkish Grand National Assembly, shall be imposed a penalty of imprisonment for a term of six months to three years." It is the new version of Article 312 under the old TPC. The new TPC went into effect in June 2005. According to news reports, at least 60 writers and journalists have been charged under Article 301, including Hrant Dink, editor of the Armenian newspaper Agos, who was convicted and given a 6-month suspended sentence (Ref A). The number of those who have had investigations opened and closed without charges is unknown.

¶4. (U) Kerincsz and his ultranationalist, right-wing organization are anti-EU, anti-NATO, and anti-U.S. We requested a meeting with Kerincsz, who declined, arguing that it would be inappropriate for a member of his organization to meet with "an agent of a foreign power." He later published his rejection of the meeting request in the MHP publication "Yeni Cag." Kerincsz is a 46-year old attorney who first entered the limelight when he began filing cases soon after the passage of Article 301. Once a case is filed, prosecutors are obligated to conduct a preliminary investigation before deciding whether further to pursue a case. A sampling of other Kerincsz-brought cases includes:

-- a complaint against a conference on Armenia at Istanbul's Bogazici University in September 2005. The Istanbul Administrative Court decided order the cancellation of the

ANKARA 00004456 002 OF 002

conference in a controversial two-to-one decision. A regional administrative court later annulled the lower court decision on jurisdictional grounds (Ref B);

-- a complaint filed in December 2005 against five journalists who had criticized the court decision to cancel the Armenia conference. The court later dropped the charges (Ref C);

-- a complaint filed in June 2006 against the Armenian Patriarch Karekin II for "insulting Turkishness" by alleging that Turks committed genocide. A prosecutor is currently investigating the complaint; and

-- a complaint filed in June 2006 against the Ecumenical Patriarch Bartholomew I and other Greek Orthodox clergy for conducting a religious service in clerical robes. A prosecutor is investigating the complaint (Ref D).

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Government May Finally Need to Take Action  
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¶5. (C) The GOT had earlier asked for patience and hoped that jurisprudence would be developed to remove the ambiguities in the law and its implementation. As AKP Vice Chairman and MP Dengir Mir Mehmet Firat explained to us, the introduction of the new TPC had wiped the jurisprudence slate clean -- they were starting from scratch. The legislators had done their work; now it was up to the courts. While he personally had objected to the wording of Article 301, the Court of Appeals needed to have its say; jurisprudence should resolve the issue.

¶6. (C) However, Kerincsz's propensity for filing suits under Article 301 could make this solution untenable. Human Rights Association Director General Yusuf Alatas told us government sources indicated to him that they would like to address Article 301 in the near-term but wanted to wait for a groundswell of popular support from NGOs and intellectuals first. PM Advisor Nabi Avci told us that amending Article

301 was indeed a possibility, in the context of convening the Turkish parliament early for an extraordinary session in September to address items from the Ninth Reform Package (Ref E).

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Comment  
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17. (C) The EU has also expressed its displeasure with Article 301 and its consequences. With an EU progress report expected October 24, the GOT may have to move quickly and decisively to amend (more likely) or remove (altogether less likely) Article 301.

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